



POSITION STATEMENT:

THE TOWN OF BELMONT HAS SURPASSED THE “GENERAL LAND AREA MINIMUM” UNDER CHAPTER 40B, AND THEREFORE THE ZONING BOARD SHOULD INVOKE THE SAFE HARBOR

**Prepared by Build Wise Belmont, an organization of Belmont residents
in relation to the comprehensive permit application for 91 Beatrice Circle
pending before the Belmont Zoning Board of Appeals**

Date: January 13, 2021

The Belmont Zoning Board of Appeals (“Board”) has the right to invoke the “general land area minimum” (“GLAM”) safe harbor under Chapter 40B in relation to the pending Chapter 40B application for 91 Beatrice Circle. The GLAM is one of three statutory “safe harbors” under Chapter 40B which can and should be exercised whenever a comprehensive permit application is filed. For towns that have affordable housing on sites that comprise at least 1.5% of the land area zoned for residential, commercial or industrial use, any decision made on a comprehensive permit application is considered, per se, “consistent with local needs.” In other words, when a town reaches the 1.5% GLAM threshold, the local zoning board may approve or deny a Chapter 40B project with impunity.

According to our calculations, Belmont surpasses the 1.5% GLAM threshold and, as such, the Board may and should invoke the GLAM safe harbor. However, to do so, the Board must put the Developer on notice of this defense “[w]ithin 15 days of the opening of the local hearing for the Comprehensive permit.” 760 CMR 56.03(8)(a). The Board’s decision to raise this defense must be made during the public hearing. Importantly, invoking the GLAM safe harbor within this 15-day time period is not a *denial* of the Project; rather, it simply means that after the Board conducts its public hearing on the application, whatever decision it renders, whether it is an approval with conditions or a denial, will be upheld as a matter of law. The

POSITION STATEMENT – BELMONT’S GLAM STATUS

January 13, 2021

Page 2

Chapter 40B regulations allow for the Developer to make an immediate appeal from a safe harbor determination, which appeal is made to the state Department of Housing and Community Development (“DHCD”). If an appeal is made, the Board’s public hearing is stayed pending the outcome of the appeal.

Calculation of a town’s status under the GLAM requires the collection and analysis of data from several sources. Over the last couple of weeks, Belmont residents have been gathering information, and the latest *conservative* calculation indicates that the Town is at 1.527%. The latest calculations were made by Belmont resident and attorney Max Colice, refining work that had been started by Belmont selectman Roy Epstein and Planning Board member Renee Guo. Mr. Epstein and Ms. Guo reached a lower GLAM because (1) they did not include Group Home acreage in the GLAM numerator and (2) they did not exclude two subdistricts that are not zoned for commercial, industrial, or residential use from the GLAM denominator. The land area calculations for the properties in the numerator and the denominator are based on data within the Town’s GIS database, consistent with the GLAM Guidelines published by DHCD. This Memorandum explains these calculations, specifically addressing some of the unique legal issues that arise under the GLAM provisions of G.L. c. 40B, § 20.

Table 1 – Conservative GLAM Calculation Jan. 13, 2021

	<i>Acres</i>
<i>Total</i>	
MassGIS Town Survey Boundary	3017.347
<i>Excluded Areas</i>	
Public Land	499.432
Public Rights of Way (ROW)	503.533
Water on Private Land (excludable)	4.553
McLean Subdistrict Zone 4 - Research and Development Subdistrict	11.580
McLean Subdistrict Zone 5 - McLean Institutional Subdistrict	46.170
Total Excluded Area	1065.267
Total Land Area (denominator)	1952.080
Non-Group Homes	28.335
Group Homes	1.479
<i>SHI Eligible Areas (numerator)</i>	29.815
Belmont 1.5% GLAM Status	1.527%

I. Numerator – Subsidized Housing Inventory

In the GLAM calculation, the numerator contains the land occupied by all of the affordable housing units on the Town’s Chapter 40B Subsidized Housing Inventory. There is

POSITION STATEMENT – BELMONT’S GLAM STATUS

January 13, 2021

Page 3

on-going debate concerning how to calculate the land area of the individual parcels of subsidized housing. The statute, G.L. c. 40B, § 20, defines the GLAM threshold as being met when “low or moderate income housing exists which is ... on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use.” In the GLAM Guidelines, DHCD has attempted to limit the land area of affordable housing parcels (the numerator) to those areas of the property that are “directly associated” with the housing unit, including wooded areas that are “actively maintained” by the owners of the housing unit. The purpose of this restrictive language is to prevent municipalities from counting the entire land area of an affordable housing development if only a percentage of the parcel was cleared and developed.

Several municipalities are challenging the legitimacy of this “directly associated” provision of the GLAM Guidelines, arguing that it is inconsistent with the plain language of the statute, and HAC caselaw pre-Guidelines. These towns include Arlington, Braintree, Stoneham, Weston, and North Reading. The Housing Appeals Committee has applied the GLAM Guidelines in several interlocutory appeals, but to our knowledge, this question of law has not been decided by the courts. The question is likely to be presented to a trial court in the pending Stoneham and Braintree matters, but not in the near future.

Importantly, our calculation of the Town’s GLAM status is in compliance with the Guidelines, and does not rely on an argument that the “directly associated” language is invalid. If that language is found to be ultra vires, the Town’s position will be stronger relative to Safe Harbor.

A. *Group Home Acreage*

According to the DHCD’s Subsidized Housing Inventory census, there are 55 group home units in Belmont. We believe we were able to identify the locations of these units through the ownership and assessor code fields in the Town’s assessment database. There is a process by which zoning boards can request the group home acreage from DHCD, which in turn requests it from the two state agencies that oversee group homes in Massachusetts. We understand that this request was previously made by the Town, but we have not seen the request or the data. We recommend that the Town follow up with DHCD to get this calculation.

Mr. Epstein and Ms. Guo did not include Group Home Acreage in their GLAM calculation. This is reason why their GLAM calculation is lower than the GLAM calculation presented here.

B. *The Residences at Acorn Park*

This development, near Alewife Station, contains 13.23 acres. We believe that the entire site can be considered “directly associated” and “actively maintained” under the Guidelines. The comprehensive permit plans filed with the Board before construction indicate that nearly the entire area (and even portions of adjacent lots), would be used for stormwater management, with

POSITION STATEMENT – BELMONT’S GLAM STATUS

January 13, 2021

Page 4

the surrounding woodlands used as swales. Further, the comprehensive permit plans also indicate that the entire tract, including the surrounding woodlands, are to be actively maintained.

C. *The Bradford*

The Bradford is a new apartment complex at 525 Common Street in Belmont, consisting of seven separately-assessed parcels. We understand that 8.9% of the residential units at the Bradford (12 out of 112 units) are restricted affordable. The units are not listed on the SHI that we recently obtained from DHCD, although we were informed by Glenn Clancy that he or someone else in town government submitted a request to DHCD to add the affordable units to the SHI. The total land area of the Bradford parcels in downtown Belmont is 1.78 acres. The 1.5% calculation provided in Table 1 above does not include the Bradford’s proportional land area (8.9% of the tract of land, or 0.16 acres). If this land area was added to the numerator, the Town’s position would be strengthened.

II. The Denominator

We have calculated the total land area of Belmont where commercial, residential or industrial uses are permitted to be 1,952.08 acres. This calculation complies with the GLAM Guidelines. We excluded all publicly-owned land, including the land area of all rights-of-way for town and state roads, which we obtained from MassDOT. We excluded water bodies using GIS data, and, consistent with the Guidelines, we excluded 57.75 acres of land within the McLean Zoning Subdistricts 4 and 5, where commercial, residential or industrial uses are not allowed. Mr. Epstein and Ms. Guo did not account for McLean Zoning Subdistricts 4 and 5. This is the other big reason for the difference between their GLAM calculation and the GLAM calculation presented here.

Notably, for Table 1, we did not exclude 53.57 acres of land in Belmont that is privately-owned and subject to a perpetual conservation restriction, even though that land can never be used for commercial, residential or industrial development. We note that under the GLAM Guidelines and HAC caselaw, privately-held land under a conservation restriction cannot be excluded from the denominator. That rule has been challenged by Stoneham and other communities. If these 53.57 acres of land *are* excludable, then the Town’s position is stronger.¹

III. Conclusion

Importantly, even under DHCD’s indulgent GLAM Guidelines, Belmont meets the 1.5% threshold. Just as there are many scenarios by which a presidential candidate can reach 270 electoral votes, there are several paths by which Belmont can achieve the 1.5% threshold. As shown in Table 1, which is the most-conservative path, the Town is at 1.527%. This calculation does not include the pro-rated land for the Bradford units (0.16 acres) in the numerator, and

¹ MassAudobon, a non-profit land conservancy, owns 86 acres of land that is not subject to a conservation restriction (to our knowledge). We did not exclude that land from the denominator either.

POSITION STATEMENT – BELMONT’S GLAM STATUS

January 13, 2021

Page 5

applies the GLAM Guidelines by not excluding conservation-restricted or Mass Audubon land. If those variables are adjusted, the percentages get more favorable. See Table 2 below.

Table 2 - Safe-Harbor Threshold Matrix

		SHI Area w/o Bradford	SHI Area w/pro- rated Bradford	SHI Area w/complete Bradford
	acres	29.815	29.974	31.595
Land Area – GLAM Guidelines	1952.080	1.527%	1.535%	1.619%
Land Area excl. CRs	1898.524	1.570%	1.579%	1.664%
Land Area excl. CRs and Mass Audubon land	1811.799	1.646%	1.654%	1.744%

Under the GLAM Guidelines, when a zoning board invokes the safe harbor, it must provide backing documentation in a form consistent with the GIS technical requirements stated in the Guidelines within 15 days of opening the hearing. In practice, this deadline is completely unworkable, and is typically honored in the breach, as it was with the most recent interlocutory appeals in Weston and North Reading. The data provided in the Excel spreadsheet follows DHCD’s calculation methodology, but does not strictly follow the technical GIS requirements. We recommend that Belmont engage with a GIS expert to assist in compiling the necessary data and calculations as soon as possible.

Thank you for your attention to this matter.